



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,043	05/23/2001	Saadat H. Khan	0012-1	2402
25901 7590 09/18/2007 ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			EXAMINER BORLINGHAUS, JASON M	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 09/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/864,043	<b>Applicant(s)</b> KHAN, SAADAT H.	
	<b>Examiner</b> Jason M. Borlinghaus	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 459 - 469 and 471 - 473 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 459 - 469 and 471 - 473 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/26/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 459 – 470 and 471 - 473** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 5,794,207) in view of Miller (Miller, Michael. *The Complete Idiot's Guide to Online Auctions*. Que. 1999. pp. 1 – 331) and **Official Notice**.

**Regarding Claim 459**, Walker discloses a (online auction) system for processing the sale and purchase of items, comprising:

- a. a storage device (data storage device). (see col. 11, line 40 – col. 14, line 52);
- b. a processor (CPU) connected to the storage device. (see col. 11, line 40 – col. 14, line 52; fig. 2); and

the storage device storing a program (software) for controlling the processor (see col. 11, line 40 – col. 14, line 52);

and the processor operative with the program to:

- i. receive sell offers from a seller (counteroffers) and bargain offers (purchase offers) from a buyer, including conditions for purchase (other conditions the buyer requires) and a payment identifier (payment preferences), thereby defining said bargain offer (see col. 8, line 27 – col. 9, line 50; col. 20, line 50 – col. 21, line 67; Claim 1) ;
- ii. carry out a bargaining (offer/counteroffer exchange) process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller. (see col. 22, line 40 – col. 23, line 17);

Art Unit: 3693

- iii. arrange for the purchase (payment) of said at least one item by said buyer from said seller at said price. (see col. 20, line 50 – col. 21, line 67); and
- iv. a graphic display (see col. 14, lines 56 – 59).

Walker does not teach a system in which the processor operative with the program to provide a graphically displayed meter, wherein said meter graphically depicts a probability for system acceptance of buyer's offer for purchase of the product.

Miller discloses a system (online auction system) in which the processor operative with the program to provide a graphically displayed meter, wherein said meter graphically depicts a probability for system acceptance of buyer's offer (bid) for purchase of the product. (such as whether a buyer's offer is the current winning bid or, at least, satisfies a reserve price). (see pp. 20 – 22; 28 – 30; 189 - 197).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker by incorporating a graphical display, as disclosed by Miller, allowing for a buyer to monitor their status within the sale process and the probability of the sale proceeding to completion.

**Regarding Claim 460**, Walker discloses a system further operative to:

- verify the legitimacy, authenticity and condition of said product. (Walker discloses that the central controller verifies that the seller can provide the specific good requested. Such verification includes verifying that seller is a legitimate and authenticated seller of such items. Furthermore, should the delivered goods not meet all the conditions and terms of the CPO, the

central controller, acting as arbiter, verifies the condition of said products.

– see col. 7, lines 9 – 12; col. 19 line 13 – col. 20, line 48);

- verify the pricing of products listed by the seller. (Walker discloses verification of price listed in seller counteroffer via authentication of seller posting the counteroffer – see col. 22, line 39 – col. 23, line 18);
- said verification comprising the steps of:
  - a. checking product certification (whether product meets conditions of CPO as certified via seller acceptance of CPO) at the time of pick-up or delivery. (see col. 20, lines 31 – 48); and
  - b. checking condition of said product at the time of pickup or delivery. (see col. 20, lines 31 – 48).

Walker does not teach a system further comprising obtaining issuance of an authenticity certificate from an authorized appraiser and obtaining a price evaluation from said authorized appraiser.

Examiner takes **Official Notice** that authentication of an item by an authorized appraiser, issuance of an authenticity certificate certifying such authenticity, and obtainment of a price evaluation from an authorized appraiser is old and well known in the art of sales and auction, such methodologies are typically employed, although not limited to, instances in which a purchaser is considering buying fine art or antiques.

It would have been obvious to one of ordinary skill in the art to have modified Walker and Miller by incorporating methodologies directed to ensuring authenticity and

Art Unit: 3693

appraisal value of a potential purchase, as is old and well known in the art, thereby ensuring that the potential purchase item is as advertised and priced by the seller.

**Regarding Claims 461 – 469 and 471 - 473**, Walker discloses a system wherein said processor is further operative with the program to:

- validate a received bargain offer signal (conditional purchase offer – CPO) from said buyer or sell offer signal from seller (seller response) and thereby determine whether said received offer signal meets predetermined validation criteria. (see col. 16, line 12 – col. 17, lines 46; see col. 19, line 12 – 54);
- start the bargain process by generating bargain prices (via exchange of CPOs with modified conditions, such as price) for said buyer and said seller continuously until a point is reached where an acceptable price is arrived at or said buyer or said seller stop bargaining. (see col. 22, line 40 – col. 23, line 18);
- transmit a notification (counter-offer) the buyer, said buyer's bargain (CPO) is less than minimum predetermined criteria. (see col. 22, line 39 – col. 23, line 59);
- permit buyer to request free chances (CPO opportunities) or buy more chances (CPO opportunities) at a predetermined chance purchase price (flat fee). (see col. 20, lines 16 – 39);
- permit buyer to use one or more bargain chances (CPO opportunities) provided by the system to continue bargaining until all chances (CPO

Art Unit: 3693

opportunities) have been used, said buyer having an election to purchase additional chances (CPO opportunities) for a predetermined purchase price (fee). (see col. 20, lines 16 – 39);

- further configured to indicate to the buyer that a bargain price (CPO) generated (transmitted) by said system , upon being accepted by said seller, will remain active, subject to acceptance by said buyer, during a predetermined time period (expiration date), provided that the product or service appointed for purchase remains available. (see col. 13, lines 11 – 29);
- track buyer's accumulation of a predetermined number of purchases (tracking each CPO via the buyer database). (see col. 13, lines 1 –10); and
- providing at least one message (messages) during bargaining (on the CPO), said message being an advertisement. (see col. 20, lines 16 – 30).

Walker does not teach a system wherein said processor is operative to: notify the buyer concerning the status of shipment in transit, said notification being provided at the time of sale and periodically in response to a buyer or seller request after purchase of said product; enable the buyer to use discounts to enhance bargaining opportunities; award discounts or promotions; track buyer's accumulation of a predetermined number of purchase points, and notify buyer that said accumulation of purchase points are



Art Unit: 3693

applicable to provide additional discounts; provide at least one pop-up message during bargaining, said surprise message according an additional discount on the product.

Miller discloses a system wherein said processor is operative to notify the buyer concerning the status of shipment in transit, said notification being provided at the time of sale and periodically in response to a buyer request after purchase of said product. (see pp. 41 – 42; 275 – 282).

Examiner takes **Official Notice** that enabling a buyer to use discounts to enhance bargaining opportunities, such as through the obtainment of a price discount; awarding discounts or promotions; accumulation of purchase points and the awarding of a promotional item, such as a discount, upon accumulation of a predetermined quantity of such points; pop-up messages advertising a discount on a product or other incentive are all old and well known in the art of advertising and promotions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker and Miller by incorporating a method by which to monitor the status of a shipment, as disclosed by Miller, allowing the purchaser to remain informed about the possible arrival date of said purchase.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker, Miller and **Official Notice** by incorporating traditional advertising and promotional methodologies, as are old and well known, to entice customers to engage to further purchases.

***Response to Arguments***

Applicant's arguments filed 5/29/07 have been fully considered but they are not persuasive.

**Objections & §112 Rejections**

As Applicant has amended claims against which objections and §112 rejections were lodged, Examiner withdraws such prior asserted objections and rejections.

**§ 103 Rejection of Claim 459 and 471**

Applicant argues that cited prior art reference Miller fails to disclose "a graphically displayed meter, wherein said meter graphically depicts a probability for system acceptance of buyer's offer for purchase of the product.". Applicant further asserts that a meter is defined as "1. Any of various devices designed to measure time, distance, speed, or intensity or indicate and record or regulate the amount or volume, as of the flow of gas or an electric current. 2. A postage meter. 3. A parking meter." (see Applicant's Arguments, pp. 11 – 12, citing "meter" *Dictionary.com. The American Heritage Dictionary of the English Language, 11 Fourth Edition. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/meter> (accessed: May 22, 2007).*

Examiner asserts that the broadest definition for the term was applied as to provide the "broadest reasonable interpretation consistent with the specification during

the examination of a patent application since the applicant may then amend his claims.”  
*See In re Prater and Wei*, 162 USPQ 541, 550 (CCPA 1969).

Examiner asserts that Miller discloses a graphically displayed meter, that is Miller discloses a measuring device that monitors incoming offers and graphically displays its computation on the computer screen. (see p. 190). The computation depicts the probability for system acceptance of the buyer's offer, as the meter displays the current high bidder and, therefore, the buyer with the highest probability of winning the auction. Conversely, if a buyer is not indicated as the highest bidder, such buyer has less of a probability of system acceptance of his offer.

Appellant argues that Examiner's interpretation is in error because the graphically display fails to provide “any sort of measurement or quantify the probability for system acceptance of buyer's offer.” (see Applicant Arguments, p. 12). However, such quantification of probability is not stated in the claim limitations. Examiner asserts that, despite Applicant's arguments to the contrary, a meter does not necessarily require the production of specific measurements to be considered a meter.

**Official Notice(s)**

In response to the applicant's traversal of Official Notice finding(s) in previous office action, Examiner asserts that the traversal is inadequate. Adequate traversal is a two-step process. First, applicant(s) must state their traversal on the record. Second and in accordance with 37 C.F.R. 1.111(b) which requires applicant(s) to specifically point out the supposed errors in the Office Action, applicant(s) must state why the

Art Unit: 3693

Official Notice statement(s) are not to be considered common knowledge or well known in the art.

In this application, while applicant(s) have clearly met step (1), applicant(s) have failed step (2) since they have failed to argue why the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant(s)' traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. *See MPEP 2144.03.*

However, Examiner will cite reference(s) along with this Office Action to support the reasoning behind using Official Notice and why it would have been obvious to one of ordinary skill in the art.

For example:

DeWolf (US PG Pub 2002/0032626) discloses a system (global asset information registry) further comprising obtaining issuance of an authenticity certificate from an authorized appraiser (legal documents to authenticate status or value of the asset) and obtaining a price evaluation (value of the asset) from said authorized appraiser. (see p. 1, para. 05).

Campbell (US PG Pub. 2002/0023033) discloses a system further comprising obtaining issuance of an authenticity certificate (an appraisal) from an authorized appraiser (an appraiser) and obtaining a price evaluation (appraisal as to the value of the asset) from said authorized appraiser. (see p. 6, para. 72).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker and Miller by incorporating

Art Unit: 3693

systems to ensure the authenticity and value an item, as disclosed by DeWolfe and Campbell, allowing for customer protection and prevent fraudulent transactions. Such would have been obvious based upon general disclosures by Miller concerning efforts to prevent fraudulent transactions (see pp. 215 – 226) and ensure buyer protection (see pp. 153 – 162), such as through educating buyer's concerning authenticity (see p. 154).

Mankoff (US Patent 6,385,591) discloses a system further enabling a buyer to use discounts to enhance bargaining opportunities, such as through the obtainment of a price discount (see abstract); the awarding of discounts or promotions (see abstract); and pop-up messages advertising a discount on a product or other incentive. (see col. 4, lines 5 – 18).

Ikeda (US Patent 5,937,391) discloses a system further enabling a buyer to use discounts to enhance bargaining (purchasing) opportunities, such as through the obtainment of a price discount (price reduction); the awarding of discounts or promotions; accumulation of purchase points and the awarding of a promotional item, such as a discount, upon accumulation of a predetermined quantity of such points. (see col. 2, lines 23 – 50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Walker and Miller by incorporating systems for issuing discounts, points and other promotional devices, as disclosed by Mankoff and Ikeda, to entice further customers to make further purchases.

Thus, it is for these reasons that Examiner believes taking Official Notice is proper and that such systems were well known at the time of applicant's invention.

Examiner also submits that the citation of the references above has been added as evidence to substantiate the prior Official Notice statement.

**Rejection of Claims 460 – 469 and 472 - 473**

All argument(s) and/or rationale(s) set forth above with respect to earlier addressed claim(s), Claim(s) 459 and 471, are hereby incorporated and/or reapplied so as to apply to Claim(s) 460 – 469 and 472 - 473 where applicable.

**Examiner's Note**

The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

***Conclusion***

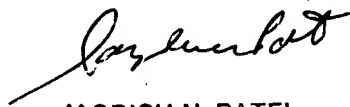
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

Art Unit: 3693

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason Borlinghaus (JMB)

September 5, 2007

  
JAGDISH N. PATEL  
PRIMARY EXAMINER